(5)

No. 01-1254

Supreme Court, U.S.
FILED
APR 30 2002
OFFICE OF THE CLERK

In the Supreme Court of the United States

A BERNHARDT,
Petitioner,
v.

SANTA MONICA COLLEGE ET AL, &
COUNTY OF LOS ANGELES ET AL.
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

REPLY BRIEF

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Petitioner – In Pro -Per

67 pp

QUESTIONS PRESENTED

1. Whether there is any constitutional recognizable preclusion at all under the Full Faith and Credit Statute 28 USCS §1738 to a State Small Claims default judgment when the State's Small Claims procedure did not satisfy the applicable requirements of the Due Process Clause of the Fourteenth Amendment. ***Kremer v. Chemical Construction Corp.***, 456 U.S. 461, 480-83 & n.**22**, 72 L. Ed. 2d 262, 102 S. Ct. 1883 (1982)

2. Whether a federal court must consider pursuant to the full faith and credit statute 28 USCS §1738 the preclusion law of the state in which the prior judgment was rendered and whether the 9th Circuit's refusal to consider the principles of California's preclusion law by holding that a prior Small Claims judgment obtained by default, on a common law claim bars petitioner's state tort claims, and petitioner's subsequent Civil Rights claims, conflicts with the holding of this Court in ***Migra vs Warren City School Dist. Bd. of Educ.*****, U.S. 465 U.S. 75, 104 S.Ct. 892, 896 (1984), that "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered"?**

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3. **Whether the 9th Circuit's** silent holding within the **res judicata decision that the County Of Los Angeles Small Claims court was of competent jurisdiction to issue a Small Claims judgment when the Small Claims court knew personal jurisdiction of the government defendant(s) was lacking, - conflicts with this court's explicit holding in Bradley v Fisher 80 U.S. (13 Wall.) 335 at 344, 20 L.Ed. 646 (1871)**_____"It is not enough that it have jurisdiction over the subject-matter of the complainant generally; it must have jurisdiction over the particular case, and if it have not, the judgment is void" And Bradley at 352 "Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible"

4 Whether the California Small Claims default judgment is void if the California Small Claims court did not have personal jurisdiction over the Government defendants, and if the procedure did not comply with the due process clause of the fourteenth amendment. *Burnham v. Superior Court Of California, County Of Marin* 495 U.S. 604, 609; 110 S. Ct. 2105; 1990; 109 L. Ed. 2d 631 (1990) Quoting *Case of the Marshalsea*, 10 Coke Rep. 68b, 77a, 77 Eng. Rep. 1027, 1041 (K.B. 1612). At 1028 _____"When a Court has jurisdiction of the cause, and proceeds inverso ordine or erroneously, no action lies against the party who sues, or the officer or minister of the Court, who executes the precept or process of the Court; **when the Court has not jurisdiction of the cause, the whole proceeding is coram non judice** [before someone who is not a judge], and an action will lie against them, without any regard to the precept or process" In Pennoyer v. Neff, 95 U.S. 714, 732 (1878), ... [The Supreme Court] announced that the judgment of a court lacking personal jurisdiction violated the Due Process Clause of the Fourteenth Amendment as well"

QUESTIONS PRESENTED

5. **Whether the** County Of Los Angeles **Small Claims court is entitled to judicial immunity for non judicial acts** of allowing police brutality in his courtroom in which the defendant Police Officer could participate, suppressing the identities of the County Of Los Angeles Caucasian Sheriffs Deputy Bailiffs that caused police brutality to Petitioner on Oct 6th 1998 in Courtroom R, and for supporting a defamatory statement that petitioner lunged at him first raised at 9th Circuit appeal, which is untrue, **and acting in the clear absence of personal jurisdiction by entering a judgment for the** Santa Monica College **Government entity and Police officer defendants when the Small Claims court knew there was no personal jurisdiction over them** [See PWC Appendix G App 79 & 80 California Code Civil Procedure § 116.220 (e) & (f)] **in circumstances where the Small Claims court did not make clear -or give Petitioner due process of law on the California Government Code Claims requirement** [See PWC -Appendix G App 80-82 California Government Code §911.4, §911.6 §905.2, §905.4 etc.]

6. Whether a State Small Claims court's dismissal of a common law action for failure to comply with the California Government Code claim requirement may preclude a subsequent Federal Civil Rights action between the same parties with new parties and new Federal Civil Rights claims that could not possibly have been sued upon in the first claim, because of the possibility that the plaintiff in the Federal Civil Rights action could previously have brought a Federal Civil Rights claim against the original defendants of the Small Claims action in a regular State Court (but did not), and when the Small Claims court provides for more limited relief than that which is provided by the Federal Civil Rights laws?

QUESTIONS PRESENTED

7. Whether there is an exception to 28 U.SCS.§ 1738 for Federal Civil rights claims under 42 USC§ 1983, §1985 (2) & (3), and claims under the continuing violation theory for Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U.S.C. § 1681 et seq. (Title IX), if these claims were not, or could not have been raised in the prior Small Claims lawsuit, but were subsequently raised in this Federal lawsuit, and if this exception to U.S.C § 1738 would give the State Court's Small Claims default judgment, a greater preclusive effect than would the courts of the state rendering the judgment

8 Whether it is one of the "accepted principles of res judicata" that no party may be precluded by a prior litigation from raising a claim that such party could not have raised in that prior litigation, due to the lack of subject matter jurisdiction of the first tribunal over the subsequent claim, and, if so, whether the Ninth Circuit's aforesaid claim preclusion holding for petitioner's State Tort Claims as well as petitioner's Civil Rights claims also conflicts with *Federated Department Stores v. Moitie*, 452 U.S. 394, 398-99 (1981)?

QUESTIONS PRESENTED

9) Does a District Court generated vexatious litigant order with a 500$ per filing fee under USDC Central District Of California Local Rule 27 (a) violate equal protection of the laws and due process clause of the Fourteenth Amendment and infringe on a pro per litigant's right of access into the district court now, *Bounds v. Smith*, 430 U.S. 817, 52 L. Ed. 2d 72, 97 S. Ct. 1491 (1977), *Wolff v. McDonnell*, 418 U.S., at 579, when the district court did not inform the pro per litigant in Plain English of the specific conduct appearing to violate subdivision FRCP 11 (b) pursuant to FRCP 11 c (1) (B) prior to entering the vexatious litigant order and cancelling the hearing -

In circumstances where two Civil Rights lawsuits were filed in half a century,

and if part of the district court's justification for the vexatious litigant order (affirmed by 9th Circuit in an unpublished opinion on June 25th 2001), were overuled in *Bernhardt v County Of Los Angeles et al* 279 F.3d 862 (9th Circuit 4th Feb 2002) as the related case itself, and the earlier motion to supplement it to this case were part of the district court's justifications for the vexatious litigant order (Appendix B App 5) ,

and if the vexatious litigant order is not narrowly tailored because it doesn't fit the district court's specific vices encountered See *De Long v Hennessey* 912 F. 2d 1144, 1146-48 (9th Circuit 1990))

QUESTIONS PRESENTED

10. Whether the lower courts erred by not deeming all the facts of Petitioner's complaint as true for Motions To Dismiss purposes under FRCP 12 (b) (6), contrary to this Court's precedent in *Lujan v Defenders Of Wildlife et al*, 504 U.S. 555; at 561, 112 S. Ct. 2130; 119 L. Ed. 2d 351; 1992, & implementing an extreme departure standard of review from *Steckman v Hart Brewing Inc* 143 F.3d 1293; 1998 (9th Circ. 1998), to review a pro per Civil Rights litigant's complaint and Motions To Dismiss de novo, when Steckman is not the applicable standard of review for reviewing motions to dismiss de novo in a pro - per civil rights case -

in circumstances where the excessive force and false arrest facts and claims of this 1st Amended complaint have been deemed true in *Bernhardt v. County Of Los Angeles* 279 F.3d 862 at 867 (9th Circuit 4th Feb 2002 U.S) for Motion To Dismiss purposes, as the related case contains identical facts for these claims.

in circumstances where the district court cut the pro per off from amending the 1st Amended complaint without warning See [PWC Appendix B Transcript Of Proceedings 6th July 1999. App 28] & General Civil Minutes For Informal Status Conference 12th May 1999 at [Appendix B App 37] & [Appendix B App 32-35], set no time limit to amend the 1st Amended Complaint, and refused a continuance on the two motions to dismiss hearing.

QUESTIONS PRESENTED

11. Whether the 9th Circuit decision that petitioner failed to prosecute her remaining claims is an error if petitioner stated a Municipal Violation under 42 USC 1983 & 1985 (2) & (3) against County Of Los Angeles respondents and applicable Santa Monica College et al respondents see *Monell vs Department of Social Services Of City Of New York* 436 US 658 98 S Ct 2018, 56, L.Ed. 2d 611, 1978, 253, 258, 259. *Pembaur v Cincinnati* 475 US 469 106 S Ct 1292, 89, L Ed 2d 452 (1986) and if these claims were dismissed for failing to State a Claim under a FRCP 12 (b) (6) motion for noncompliance with USDC Central District Of California Local Rules 7.6 and 7.9 which does not rise to the level of a failure to prosecute under FRCP 41(b) See *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 319-320, 101 L. Ed. 2d 285, 108 S. Ct. 2405 (1988) (Brennan, J. dissenting) *Carver v Bunch* , 946 F.2d 451; 453, 454, 455, (6th Circuit 1991) *Schilling v. Walworth County Park & Planning Commission*, 805 F.2d 272, 276-77 (7th Cir. 1986) *J.F. Edwards Const. Co. v. Anderson Safeway Guard Rail Corp.*, 542 F.2d 1318, 1323 n. 6 (7th Cir. 1976) ("Unless the violation of a local rule constitutes failure to prosecute, Rule 41 does not provide for dismissal for violation of a local rule.").

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12. Whether the lower courts erred in dismissing the County Of Los Angeles Caucasian Doe Sheriffs Bailiffs of Judge Laurence D Rubin's Courtroom R for failing to serve them personally because when there is a primae facie case for false arrest without a valid warrant the burden of production shifts to the municipal entity to prove that there was probable cause for a warrantless arrest .and assault and battery - and if this holding to dismiss the County Of Los Angeles Caucasian Does because they were not served personally {See App B, page 13 (last paragraph), page 14] ***conflicts with Bivens v Six Unknown Named Agents Of Federal Bureau Of Narcotics*** **403 U.S. 388; 91 S. Ct. 1999; 29 L. Ed. 2d 619; 1971 U. S, and the 9th Circuit's more recent published holding in Dubner v City of San Francisco 266 F.3d 959; (9th Circuit Sept 2001)** as well as with Maclin v.Paulson, 627 F.2d 83, 87 (7th Cir. 1980),Gordon v. Leeke, 574 F.2d 1147, 1152 (4th Cir. 1978)

13 Whether County Of Los Angeles respondents Terry January and Sherman Moten appeared in County Of Los Angeles Motion To Dismiss, if they were named in the proposed order [PWC Volume II App F. Page 128-131] **presented to the district court to sign.**

13b And if so – whether defenses under a FRCP 12 (b) (6) motion can be waived under FRCP 12 (g) and (h) as the County Of Los Angeles Sheriffs could have raised the defenses of insufficiency of service of the summons and complaint and lack of personal jurisdiction at the time of their motion to dismiss but did not raise the defenses, and

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13c Whether petitioner should be given due process to serve Sheriff Terry January and Sherman Moten personally under FRCP 4 (m). - If they did not appear in this case and if there are mitigating circumstances for failure to prosecute when they concealed a defect in the service of the summons & complaint which continued in their Motion To Dismiss proposed order. See (App F Page 129, 130, 131), & if the district court did not warn her that they must be served personally

14a Whether a school district may be held liable under Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U.S.C. § 1681 et seq. (Title IX), under the continuing violation theory see *Havens Reality Corp v Coleman* 455 U.S. 363 365(1982) for sexual harassment and discrimination, hostile environment & retaliations, when the claim is not based solely on one incident of a instructor sexual assault on a student in a class, but is challenging an unlawful practice of continuing violation sexual discrimination by the same school district instructor,& the unlawful practices of school district, to cover up the complaint when she reported it to them, & frame her which resulted in physical injury to petitioner in a County Of Los Angeles Courtroom on Oct 6th 1998.

14b. If a school district may be held liable under the continuing violation theory for damages under Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U.S.C § 1681 et seq. - then whether School district police cover up of a sexual assault complaint & continuing a Small Claims proceeding & disseminating false testimony fabricated prior to the proceeding that resulted in police brutality, false arrest & unlawful detainment to the petitioner during the proceeding Oct 6th 1998 can be considered as an incident in the series of continuing violations constituting sexual discrimination, retaliation & hostile environment.

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14c Whether the cumulative effect of all claims - stemming from, and including the sexual assault of 1994, may be included for purposes of the continuing violation - sexual harassment discrimination, retaliation and hostile educational environment claim under Title IX, see *Harris v Forklift Systems Inc*, 510 U.S. 17; 114 S. Ct. 367; 126 L. Ed. 2d 295; 1993 for damages purposes.

14d Whether a school district police officer investigator, should be regarded as a "School District Discrimination official" to fulfill the actual notice requirement of Title IX for a student to report a sexual assault complaint, and if not - whether constructive notice and respondeat superior should be permitted in a Title IX case ... - see *dissent Gebser, v. Lago Vista Independent School District 524 U.S. 274; 118 S. Ct. 1989; 141 L. Ed. 2d 277; (June 22nd 1998)* -

which understood "an incentive for School Boards to insulate themselves from knowledge about sex discrimination in school programs" and if petitioner sustained physical injury on Oct 6th 1998 on account of a causal chain stemming from that incentive, and in order to eliminate the incentive & prevent victims of sex discrimination from a far greater risk of further injury if they do speak up, than if the Title IX right and remedy didn't exist at all.

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15 If the district court denied the petitioner's motion to supplement this case with a cause of action for equitable relief against the County Of Los Angeles Settlement policy on 1st July 1999 without reason when the petitioner in pro -per had standing to bring the case at the time -

and if this denial prejudiced this case and the subsequently filed related case, as the 9th Circuit reversed and remanded the separate action *Bernhardt v County Of Los Angeles et al* 279 F.3d 862 on 4th Feb 2002 but held that prospective relief was moot,

and if this petition for writ of certiorari was filed in this court two days before the 9th Circuit's 4th February 2002 decision regarding mootness, and so a live case or controversy for injunctive relief did exist at the time of the 9th Circuit decision, See *Burke v. Barnes,* 479 U.S. 361, 363, 93 L. Ed. 2d 732, 107 S. Ct. 734 (1987),

and if "the capable of repetition, yet evading review" exception to mootness also applies, See *Spencer v. Kemna,* 523 U.S. 1, 17, 140 L. Ed. 2d 43, 118 S. Ct. 978 (1998),

then whether the district court order Number 36 which denied supplementation of this case with the related case should be reversed?

PARTIES TO PROCEEDING

The Petitioner is -Angela Bernhardt

The County Of Los Angeles et al respondents are - County Of Los Angeles, Los Angeles County Sheriff Department, Laurence D Rubin, 1-10 Caucasian Male Sheriff Deputy Does Of Judge Laurence D Rubin's Courtroom R & County Of Los Angeles Sheriff Department, Sherman Moten, Terry January, Leroy Baca, County Of Los Angeles Santa Monica Municipal Court. Does 1-100.

The Santa Monica College et al Respondents are - Santa Monica Community College District, Santa Monica College, Santa Monica College Police Department, Santa Monica College Board Of Trustees, , R. L. Jones, Ron Marable, O.D. Obiamiwe, Eileen Miller, Brenda Simmons, Piedad Robertson, Jo Ann Fielder, Robert Sammis, Herbert Roney, Dorothy Ehrhart - Morrison, Nancy Cattell-Luckenbach, Carole L. Curry, Patrick Nichelson, Annette Shamey.

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Petitioner In Pro - Per respectfully requests that the Court grant the Petition For Writ Of Certiorari.. Petitioner has highlighted the most relevant questions, & revised Question 5, & 10.

PRELIMINARY MATTER

Santa Monica College (SMC) et al, have misrepresented this Petition by omitting County Of Los Angeles (LA) et al parties from their list of parties in their Brief in Opposition. The County Of Los Angeles parties inclusion in this lawsuit, makes this a different lawsuit from Petitioner's Small Claim filed 2nd Sept 1998, where only three Santa Monica College respondents were parties and where the cause of action was not the same as the many different ones of this lawsuit – In audition the California Supreme Court in *Sanderson v Niemann,*17 Cal. 2d 563, 573,110 P.2d 1025, 1030 (1941)"refused to apply issue preclusion to judgments of Small Claims Courts in subsequent actions based on different causes of action from that involved in the prior Small claims suit, though tracing its origin to the same transaction"

ARGUMENT

1. THE LOWER FEDERAL COURTS FAILED TO GIVE PROPER FULL FAITH AND CREDIT TO A CALIFORNIA SMALL CLAIMS DEFAULT JUDGMENT CONTRARY TO 28 USC § 1738 & *KREMER V CHEMICAL CONSTRUCTION CORP.* 456 U.S. 461, 466 (1982) - "28 USC§ 1738 Does Not Allow Federal Courts To Employ Their Own Rules Of Res Judicata"

The 9th Circuit decisions of 25th June 2001, and 5th Oct 2001, **at** *[Petition For Writ Of Certiorari (PWC) Appx A 4, 1-4,]* **&** at *[Appx E App 55]* did not give the same preclusive effect to a California Small claims judgment at *[PWC Appx C Page App 45]* as the Courts in California would give it, & cited to no authority to justify res judicata, regarding Petitioner's State Tort Claims against SMC et al. In addition the district court never ruled on res judicata. ***See Order (53)*** *[Appx BApp 21 -25].* And although the 9th Circuit Court. Of Appeals can affirm on any theory argued below even if the district court decided the matter on different grounds. See *Spokane County v. Air Base Housing, Inc.*, 304 F.2d 494, 497 (9th Cir. 1962) **the grounds must be supported by the record *Recording Industry Ass'n of America v. Diamond Multimedia Sys., Inc.*, 180 F.3d 1072, 1077 (9th Cir. 1999). In this case the complaints or the record does not support the res judicata grounds.**

2. CLAIM & ISSUE PRECLUSION DO NOT APPLY WHEN THERE WAS NOT A FULL AND FAIR OPPORTUNITY TO LITIGATE THE SMALL CLAIM IN THE STATE PROCEEDING. The Small Claims judgment was obtained by default for failure to file a California Government Code claim which wasn't clear, & the Police Officer raised the defense during a proceeding where no cross examination was permitted. The Small Claims court entered judgment without inquiry whether the California Claims requirement could me met, when it could be-& was after. *See California Government Code Claims [PWC Volume II Apix F page 99-106]..* **Also Santa Monica College Government entities never appeared at the Small Claims proceeding.**

In addition California Code Of Civil Procedure 116.220 (e) states **"A Small claims court shall have jurisdiction over a defendant only if Plaintiff has alleged... compliance of Government Code"** *[PWC - Volume II Appx F Page 87 THROUGH 91]*, and the Small claims court therefore did not have jurisdiction over the defendants. And in ***Pennoyer v. Neff***, 95 U.S. 714, 732 (1878), this court announced that the judgment of a court lacking personal jurisdiction violated the Due Process Clause of the Fourteenth Amendment as well..." Also in Kremer *v. Chemical Construction Corp.*, 456 U.S. 461, 480-81 & n.22, (1982), **"neither claim nor issue preclusion can be applied by a federal court if there was not a full & fair opportunity to litigate the claim or issue in the state proceeding. For Res judicata to be applied, a party has had a full and fair opportunity to litigate if the procedures provided meet the requirements of the Due Process Clause of the Fourteenth Amendment. Id. at 482-83 & n.24.** *Montana v United States*, 440 U.S.147,153,(1979); n22" Redetermination of issues is warranted if there is reason to doubt the ..Fairness of procedures followed in prior litigation" *Montana* 164, n.11

Petitioner stated in her 1st Amended complaint (Page1, 31, 32 33,37) that she did not have a full or fair opportunity to litigate the Small claim See ***[PWC-Appx F Vol II Page 3 No 4 Caption, Page 45]*** **& was beaten up in the process.** See ***[PWC - Volume II Appx F Page 83 , Page85 [under page 61], Page 86, Page 87, Page 88, Page 89, Page 90, Page 91],***

3 COLLATERAL ESTOPPEL DOES NOT APPLY TO CALIFORNIA SMALL CLAIMS JUDGMENTS IN SUBSEQUENT ACTIONS BASED ON A DIFFERENT CAUSE OF ACTION FROM THAT INVOLVED IN THE

PRIOR SMALL CLAIMS SUIT, THOUGH TRACING ITS ORIGIN TO THE SAME TRANSACTION

In *Sanderson v Niemann*,17 Cal. 2d 563, 573,110 P.2d 1025, 1030 (1941) The California Supreme Court refused to apply issue preclusion to judgments of Small Claims Courts in subsequent actions that are based upon a different cause of action from that involved in the prior Small claims suit, though tracing its origin to the same transaction." DIFFERENT CLAIMS The Small claim at [*PWC -Appx C Page App 41 point 1]* are not the same claim(s) as those in this lawsuit listed at *[PWC Vol II Appx F Page 3, 4]*,many claims had not occurred or accrued when the Small claim was filed 9/2/98, and so could not possibly have be sued upon in the Small claim.

DIFFERENT PARTIES County Of Los Angeles et al, Laurence Rubin, 1 -10 Caucasian Sheriff Deputy Bailiffs, RL Jones et al *[PWC Vol II Appx F Page 2,3]* were not parties to the Small Claim Case No.98A01437. The Small Claims Parties were SMC Police Officer R Marable, Santa Monica College and Santa Monica Community College District. see **Small Claim at** *[PWC Appx C App 40]*

CALIFORNIA LAW

In *Vandenberg, v. The Superior Ct Of Sacramento County* 21 Cal. 4th 815, 830; 982 P.2d 229; 238, (1999), states Collateral estoppel (like the narrower "claim preclusion" aspect of res judicata) is intended to preserve the integrity of the judicial system, promote judicial economy, and protect litigants from harassment by vexatious litigation. (*Lucido*, *supra*, 51 Cal. 3d 335, 343.) However, collateral estoppel " 'is not an inflexible, universally applicable principle;...Whether collateral estoppel is fair and consistent with public policy in a particular case depends in part upon the character of the forum that first decided the issue later sought to be foreclosed. In this regard, courts consider the judicial nature of the prior forum, i.e., its legal formality, the scope of its jurisdiction, and its procedural safeguards, particularly including the opportunity for judicial review of adverse rulings. *United States v. Utah Constr. Co.* (1966) 384 U.S. 394, 421-422 [86 S. Ct. 1545, 1559-1560, 16 L. Ed. 2d 642] findings..were entitled to collateral estoppel where ... **findings were relevant to issues presented, parties had full and fair opportunity to litigate, and judicial review of adverse findings was available]; ...Moreover, a particular danger of injustice arises when collateral estoppel**

is invoked by a nonparty to the prior litigation. (See, e.g., *Parklane Hosiery Co. v. Shore* (1979) 439 U.S. 322, 326-333 [99 S. Ct. 645, 649-653, 58 L. Ed. 2d 552] Such cases require close examination to determine whether nonmutual use of the doctrine is fair and appropriate. (See *Parklane Hosiery, supra*, at pp. 330-331 [99 S. Ct. at pp. 651-652

Santa Monica College et als unpublished *Hawkins v Bewley Allen Cadillac* 959, F. 2d 240 (9th Circuit 1992) citation did not comply with 9th Circuit rule 36- 3(c) and thus shouldn't be considered. Hawkins is inapposite as the causes of action contained in this complaint are not the same claim as the Small Claim. Also Unpublished *Hawkins* omits *Sanderson v Niemann's* collateral estoppel precedent for California Small Claims judgments. SMC et al never raised Collateral Estoppel as a defense in the district court. See *Clark v Bear Stearns & Co, Inc* 966 F.2d 1318; (9th Circuit 1992) which states if the record is inadequate for the district court to determine whether it should apply the collateral estoppel the 9th Circuit will not consider it on appeal Also **Petitioner did state Collateral estoppel & res judicata were inapplicable to this lawsuit in her 1st Amended Complaint (Page 4) at *[PWC Vol. II Appx F Page 7]* & & Appeal Briefs.**

4RES JUDICATA INAPPICABLE WHEN THE COURT HAD NO SUBJECT MATTER JURISDICTION OVER SUBSEQUENT CLAIMS.

A Small Claims Judgment Cannot be given the effect of extinguishing claims which did not even then exist in the lawsuit, and which could not possibly have been sued upon in the previous case See *Lawlor v. National Screen Service* 349 U.S. 322, at 328 99 L.Ed. 1122, 1127-1128, 75 S.Ct. 865 (1955) **Petitioner's Civil Rights & State Tort Claims of Excessive Force, False Arrest, Assault and Battery, Abuse Of Process etc. did not exist at the time the Small Claim was filed on 2nd Sept 1998.** See **Small Claim** at *[PWC Appx C Page App 41]*. Many claims occurred or accrued on or after Oct 6th 1998,see ***1st Amended Complaint Caption*** *[PWC Volume II Appx F page 3 and 4]*.As the Small Claims Court had no subject matter jurisdiction over any claims occurring or accruing on Oct 6th 1998 or after, the subsequent claims cannot be res judicata. Thus 9th Circuit's 25th June 2001 decision that the State Tort Claims against Santa Monica College et al are res judicata conflicts with *Lawlor* 349 U.S. 322 at 328, &

Cullen v. Margiotta, 811 F.2d 698, 732 (2dCir.1987). Restatement (Second) of Judgments § 26(1)(c)

5 EXCEPTION TO CLAIM & ISSUE PRECLUSIVE EFFECT FOR TRIBUNALS OF LIMITED JURISDICTION. The Small Claims court has no jurisdiction over Civil Rights claims ***See Small claims jurisdiction*** **California Code Of Civil Procedure 116.220** at *[PWC Appx G App 78- App 80]* .And in California if a court had no jurisdiction to decide an issue directly, then neither claim nor issue preclusive effect will be given to an incidental determination of the court," ***Shaw v State Of California Dept of Alcoholic Beverage Control*** **788 F.2d 600; (9th Circuit 1986)** ***Marrese v American Academy Of Orthopaedic Surgeons 470 U.S. 373; at 382 105 S. Ct. 1327; Eichman v Fotomat Corp*** 759 F.2d 1434; 1438 (9th Circ 1985);"

6. CALIFORNIA GOVERNMENT CLAIMS NOT NECESSARY FOR CIVIL RIGHTS CLAIMS *Williams v. Horvath* 16 Cal.3d 834, 842 [129 Cal.Rptr. 453, 548 P.2d 1125], (1976)**Subsequent Claims raised for the first time in Federal Court** -Cal Gov Code claims not required.

7..THE INVASION OF MORE THAN ONE PRIMARY RIGHT GIVES RISE TO AS MANY CAUSES OF ACTION AS RIGHTS VIOLATED EVEN THOUGH THEY MAY ARISE FROM A SINGLE SET OF FACTS. There are many primary rights violated in this Federal Civil Rights Law Suit case. Fora list please refer to [*Reply Brief PWC Appx H Page App 19 - App 20* see also *Sawyer v. First City Financial Corp., 124 Cal. App. 3d 390, 399, 177 Cal. Rptr. 398, 403 (1981) Agarwal v Johnson et al*, 25 Cal. 3d 932 955; 603 P.2d 58; 160 Cal. Rptr. 141 (1979)

8. THE DISTRICT COURT MUST DEEM THE FACTS TRUE UNDER FRCP 12 (b) (6) MOTIONS -*Lujan v Defenders Of Wildlife*, 504 U.S. 555; AT 561, 112 S. Ct. 2130; 119 L. Ed. 2d 351; 1992, & LIBERALLY CONSTRUE CIVIL RIGHTS PROPER'S COMPLAINTS.

The Excessive Force & False arrest claims in the **1st Amended complaint** were ignored in the court's Motions To Dismiss order.- **at *[PWC - Volume II Appx F Page 83 , Page 85 [under page 61] page 86 - 91]*** and so was **Petitioner's Opposition To County Of LA's Motion To Dismiss filed Oct 4th 1999** ***See [PWC Volume II Appx F Page 144 - 169].***

9. TWO 9TH CIRCUIT DECISIONS CONFLICT WITH ONE ANOTHER & THE DISTRICT COURT'S VEXATIOUS LITIGANT ORDER'S JUSTIFICATIONS IN THIS CASE HAVE BEEN OVERRULED BY 9TH CIRCUIT DECISION IN THE RELATED CASE. In Petitioner's Second Amended Complaint for related case- **CV-99-10121-JSL (Mc)** Page 2, & 3 Para 5A & 5B ***at [Appx I Of This Reply Brief] - Page App 31, App 32, 33]*** **the facts for excessive force and false arrest were deemed true for Motion To Dismiss purposes, which makes it inconsistent that 9th Circuit did not deem the same facts true in this case.For facts in this case-** ***See 1st Amended complaint [PWC - Volume II Appx F Page 83 , Page85 [under page 61], Page 86, Page 87, Page 88, Page 89, Page 90, Page 91],*** **The related case itself CV-99-10121 -JSL Mc was a justification for vexatious litigant order on this case,** see *[PWC -Appx B App 5]* but it is is now reversed and remanded. See *Bernhardt v. County Of Los Angeles* 279 F.3d 862 at 867 (9th Circuit 4th Feb 2002 U.S) As the excessive force and false arrest facts in the related case have been deemed true and this case has the same facts then it follows that the vexatious litigant order for this case does not narrowly fit the district court vice encountered, failing to state a claim and frivolous claims, as Petitioner has stated a claim for excessive force and false arrest for motions to dismiss purposes in both cases. *De Long vs Hennessey* 912 F 2d 1144, 1146-48 (9th Circuit 1990)

10 A The District Court Has Jurisdiction Over SMC College District, Santa Monica College & SMC Police dept. entities as **11th Amendment is abrogated with regards to suits under Title IX.** See The Education Amendments Of 1972, 86 Stat 373, as Amended 20 USC§ 1681 Et Seq (a) & **42 U.S.C §2000d7(a)(1)**

BThe District Court has jurisdiction over the Over SMCC District, SMC, & SMC Police dept. entities under 42 USC §1983, §1985 Because Section \5 of the Fourteenth Amendment, permits Congress to enforce by appropriate legislation the constitutional guarantee that no State shall deprive any person of life, liberty, or property, without due process or deny any person equal protection of the laws, *City of Boerne v. Flores*, 521 U.S. 507, 517, 526 (1997) & *Brzonkala v Morrison* 529 U.S. 598; 682, 120 S. Ct. 1740; 146 L. Ed. 2d 658; (2000) citing to ***Ex parte Virginia***, 100 U.S. 339, 25 L. Ed. 676 (1880). **C** SMC Police Dept, County Of LA, County Of LA Sheriffs Dept, and Santa Monica Municipal Court are not arms of the state, & not entitled to XI Amendment

Immunity & are separate suable entities or "persons" for *Monell* purposes under 42 USC §1983 and §1985. See *Streit v. County of Los Angeles*, 236 F.3d 552, 559-65 (9th Cir. 2001), *Shaw v. California Dep't of Alcoholic Beverage Control*, 788 F.2d 600, 605 (9th Cir. 1986) **D.** The Eleventh Amendment does not bar prospective injunctive relief against an officer of the state who acts outside the bounds of his authority. See *Ex Parte Young*, 209 U.S. 123, 52 L. Ed. 714, 28 S. Ct. 441(1908);**E JUDICIAL IMMUNITY NOT APPLICABLE TO NON JUDICIAL ACTS OR ACTING IN CLEAR ABSENCE OF PERSONAL JURISDICTION OVER SMALL CLAIMS DEFENDANTS.** ***Ex parte Virginia,*** 100 U.S. 339, 25 L. Ed. 676 (1880).***Bradley v Fisher*** **80 US (13 wall) 335 at 344, 20 L. Ed. 646 (1871,** ***Pennoyer*** **v.** ***Neff, 95 U.S. 714, 732 (1878), Burnham v Superior Court Of California*** **495 U.S. 604; at 608 & 609 (1990)** ***Case Of The Marshalsea*** **10 Coke Rep. 68 b, 76. 77a, 77 Eng. Rep. 1027, 1041 (K Bench 1612) . F** SMC & County Of LA respondents can be sued in Individual Capacity. *Kentucky v. Graham*, 473 U.S. 159, 165, 87 L. Ed. 2d 114, 105 S. Ct. 3099(1985) ...Id at 167-68. G.The Individual Capacity SMC and County Of LA Respondents are Not Entitled To Assert Qualified Immunity from Liability when the material facts are disputed.. Issues of credibility belong to the trier of fact. The Seventh Amendment so requires. *Thompson v. Mahre,* 110 F.3d 716, 719 (9th Cir. 1997) *La Londe v County Of Riverside* 204 F.3d 947; (9th Circuit 25th Feb 2000) & **Petitioner requested a Jury Trial,** ***1st Amended Complaint Caption (Page 1)****[PWC- Volume II- Appx F, Page 4]* **H. SMC & County Of LA individual respondents are not entitled to Qualified Immunity as a matter of law. As a reasonable teacher, police officer, Superintendent, Judge, Sheriff, Discrimination Official would not have believed their conduct was lawful.** See *Katzv.United States*, 194 F.3d 962, 967 (9th Circ.1999) **11 STATUTE OF LIMITATIONS NOT APPLICABLE – To TITLE IX CONTINUING VIOLATION SEXUAL DISCRIMINATION HOSTILE ENVIRONMENT RETALIATION CLAIM– WHICH ACCRUED 10/6/98, & LIMITATIONS NOT APPLICABLE TO CIVIL RIGHTS CLAIM.STATE TORT CLAIMS ACCRUING 3/17/1998 & 10/6/1998 AS THIS CASE WAS FILED 3/15/99** Petitioner alleged School District Officials (1) had actual knowledge of the discrimination by an SMC Instructor from Nov 1996 onwards (&

actual notice of SMC School District Police Cover up of Petitioner's sexual assault complaint against the instructor from 3/17/98 onwards, and (2) School District Officials responded to that knowledge with deliberate indifference. n4 *Gebser*, 524 U.S.at 290. Petitioner's complaint under Title IX sets out a series of violations sufficiently related, serial or systemic under Title IX, & the cumulative harm is indivisible The Continuing violation claim under Title IX, & most claims under 42 USC 1983 & 1985 accrued on Oct 6th 1998. Dismissal under FRCP 12(b)(6)-statute of limitations grounds is appropriate only if the assertions of the complaint, read with the required liberality, would not permit the Petitioner to prove the statute was tolled. *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980)) :Equitable tolling & Estoppel were raised in 1st Amended Complaint *[PWC- Volume II Appx F - page 17, 30,* 31].The continuing violation doctrine was raised on appeal citing to *Morgan v.Amtrak,* 232 F.3d 1008 (9th Cir Nov 2000) [Now Supreme Court Docket 00-1614) *Draper v.Coeur Rochester, Inc.*, 147 F.3d 1104, 1107 (9th Cir. 1998)etc.

12 PETITIONER PRESENTED ISSUES CONCERING FULL FAITH AND CREDIT & RES JUDICATA TO THE 9TH CIRCUIT IN HER PETITION FOR REHEARING TO PANEL & EN BANC COURT after the MEMORANDUM DECISION OF 25th June 2001 which made a ruling on res judicata for the first time. Petitioner had raised the issue that neither res judicata nor collateral estoppel applied to the district court in her complaints. See in Excerpt *[Reply Brief PWC - AppX H Page App1, App 6-30]*, & 9th Circuit Petition For Rehearing filed 12th July 2000.

STATEMENT OF THE CASE

In 1994 SMC Instructor R.L Jones subjected Petitioner to disparate treatment.on the basis of her sex, *Petitioner* was at table in a photography class , when surprised by something hard being pressed up against her from behind. She turned around to find the Instructor with his erect genitals pressed up against her, and was unable to escape as the table blocked her movement.. After Petitioner was in a state of shock. *[PWCVol II, Appx F Page 22, 23]* Petitioner reported the assault to T Tindall the same day -*[PWC Vol II, Appx F Page 28]* The next day upon hearing sexual innuendo Petitioner told the Instructor to not touch her again. But by Nov 1996 a pattern of continuing violations emerged prompting Petitioner to report all the abuse to SMC Police Dept. SMC

Marable refused to take down the complaint in writing - said the sexual assault was too old to report, yet interrogated her about it. ***See 1st Amended complaint*** *(page 6 & 7 & 28 & 32 & 44-45, 47,55, 60)reproduced in [PWC Volume II, Appx F, Page 10 & 11, point 6 & Appx F Page 40 & 41 & Appx F Page 46, 63, 66,77 last line, 84]* SMC respondents misrepresent Petitioner's complaint(s) as Petitioner never stated SMC Police officer Marable interviewed the accused instructor Jones in November 1996. An SMC investigation began in June 1997, after the 3rd time Petitioner reported the Instructor's sexual assault on her to SMC Officials, but the results of **Feb 1998 do not confirm an interview between SMC Police Officer Marable's & the SMC Instructor in Nov 1996 because Marable is not mentioned in the Investigation Interviews.** *[PWC Appx D, App 49 No. II]* **[Note Officer's Marable's absence - prompted Petitioner to question Marable in March 1998 at which time she discovered his cover up of her sexual assault complaint].** Also the SMC Official Investigation - distorted where the sexual assault took place - a darkroom, & changed the Nov 1996 date of first reporting, to the later May 28th 1997 date, and decorated the later date with defamatory circumstances1. **Please take Judicial Notice Of The SMC Summary Of The Sexual Assault Investigation at**[PWC -*Appx D Page App 49 First pararagraph Number 1]*.Also if the Police Officer admitted receiving Petitioner's complaint all along then their would have been no Small Claims lawsuit for police cover up of a sexual assault complaint on Sept 2nd 1998. ***See Small Claim*** *[PWC Appx C App 41 under 1]*. So the full thrust of the Police Officer's refusal to record the complaint in Nov 1996 wasn't evident until 17th March 1998 when Petitioner discovered Officer Marable's cover up Then on reporting the School District Police cover up of her sexual assault complaint against the instructor to the SMC School District President in person in Aug 1998 - the response was to end the meeting by threatening the Petitioner with the School district police, & the School District Superintendent simultaneously refusing to investigate the police officer for police cover up ***See 1st Amended Complaint*** [P58,59] [PWC Vole II Appx F Page 80-82 2nd Para 82], stating that Officer Marable had already been investigated, & so the full thrust of SMC District's acquiescence in sexual discrimination & School District Police cover up of it wasn't clear until August 98. Then Petitioner sued in Santa Monica Small Claims Court & Marable appeared alone. ***See 1st Amended***

Complaint *(**Page** 37 at [PWC Vol II Appx F Page 53 1st Para].* SMC Police Officer Marable continued the proceeding knowing the California Government Claim requirement was not met, gave perjured testimony - & continued to state that he had not received a sexual assault complaint from the Petitioner ever, & raised the California Government Code requirement defense to end the proceeding abruptly which resulted in brutality - an assault & battery to the Petitioner by a County Of Los Angeles Caucasian Sheriff Deputy kicking the Petitioner to the floor, punching the Petitioner for two minutes around her ribcage, others joined digging their fingernails into the back of her hand, wrenching her metal framed glasses off her face, & allowing SMC Police Officer Marable to pose for a police brutality ritual, before falsely arresting her.*[PWC -Volume II Appx F Page 83, 84, 85,86, 87, 88,89]* On 9th Circuit appeals and not below - County Of LA et al state Petitioner lunged at Judge Laurence Rubin ***-See County Of Los Angeles Briefs for USCA 9th Circuit Appeals 00-55596, 00-55930 Page 1 footnote 1,***reproducted at *[PWC Volume II Apix F, 175],*but this is untrue and made more incredible as Petitioner was not arrested. Also Petitioner believes police brutality in Judge Laurence D Rubin's courtroom has been policy for many years, and not random because a few days after the beating Petitioner took, she remembered being told years before through a coincidence that Sheriff's beating people up took on a regular basis in Judge Laurence Rubin's courtroom " See 1st Amended Complaint (Page 65), & Opposition To County Of LA Motion To Dismiss-(Page 3, 4) & at *[PWC Volume II Appx F, Page 91,148, 149]* And so the full thrust of what was happening wasn't apparent until Oct 6th 1998 when petitioner was the victim of police brutality & false arrest without a valid warrant, unlawful detainment, because SMC respondents covered up the initial reporting of her sexual assault complaint in Nov 1996 & fabricated probable cause to arrest by SMC Police Officer Marable refusing to take Petitioner's sexual assault and continuing violation complaint down in writing in Nov 1996, & then by March 17 1998 completely covering it up.

CONCLUSION

Petitioner Angela Bernhardt In Pro Per urges this Court to Grant Her Petition. For Writ Of Certiorari As it presents one or more Questions appropriate for review. Respectfully Submitted

Angela Bernhardt Petitioner In Pro-Per 25th April 2002

A Bernhardt

APPENDIX H - APP 1

FILED 12TH JULY In United States Court Of Appeals For 9th Circuit

EXCERPT FROM APPELLANT ANGELA BERNHARDT'S PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC THE UNITED STATES COURT OF APPEALS FOR NINTH CIRCUIT

95 Seventh Street. P.O.Box 193939 San Francisco, CA 94119-3939

USCA 9th - CASE No 00-55596 & 00-55530

Bernhardt v Santa Monica College et al, & County Of Los Angeles et al.

(omitted)

Page 6

(omitted)

8 *The Memorandum Opinion has overlooked that a federal court must give the same preclusive effect to a [Small Claim] state court judgment as would the courts of the state wher the judgment was rendered.*

Relevant Case

Allen v. McCurry, 449 U.S. 90, 105 (1980). In California, a small claims judgment has only limited res judicata effect and does not necessarily operate to bar subsequent proceedings on different causes of action. See ***Sanderson v. Niemann,*** 110 P. 2d 1025, 1031 (en banc) (1941).

(omitted)

8th July 2001 Angela Bernhardt In Pro - Per.

APPENDIX H - APP 2

Filed In United States Court Of Appeals For 9th Circuit 26th July 2001Dated 23rd July 2001

EXCERPT FROM APPELLANT'S CITATIONS OF SUPPLEMENTAL AUTHORITIES ON BRIEFS-FRAP 28 (j) TO THE PANEL AND EN BANC COURT OF THE UNITED STATES COURT OF APPEALS FOR 9TH CIRCUIT. ***(Please Note: Citations have been placed under relevant issues to facilitate a quicker understanding, but content of document remains exactly same)***

THE UNITED STATES COURT OF APPEALS FOR NINTH CIRCUIT
95 Seventh Street. P.O.Box 193939 San Francisco, CA 94119-3939
USCA 9th - CASE No 00-55596 & 00-55530

Bernhardt v Santa Monica College et al, & County Of Los Angeles et al.

To The Clerk Of The Court -I am Angela Bernhardt, the appellant in pro per. Under FRAP 28 (j) I wish to include these pertinent & significant authorities that came to my attention since the filing of my briefs which support:

1) That Santa Monica College appellees[1] have not met their burden in explaining why Res Judicata or Collateral Estoppel is justified with respect to any cause of action or any issue in this case[2]

CITATIONS FOR ISSUE 1) *Younan v. Caruso*, 51 Cal. App. 4th 401, 406-07 (1996); see also *Trevino v. Gates*, 99 F.3d 911, 923 (1996)."The party asserting preclusion bears the burden of showing with clarity and certainty what was determined by the prior judgment."*Offshore*

FILED 26th July 2001 In United States Court Of Appeals For 9th Circuit

EXCERPT FROM APPELLANT ANGELA BERNHARDT'S CITATIONS OF SUPPLEMENTAL AUTHORITIES ON BRIEFS -FRAP 28 (j) TO THE PANELAND EN BANC COURT OF THE UNITED STATES COURT OF APPEALS FOR NINTH CIRCUIT

USCA 9th - CASE No 00-55596 & 00-55530 - Bernhardt v Santa Monica College et al, & County Of Los Angeles et al.

1) *Youman v Caruso*, 51 Cal. App. 4th 401, 406-407 (1996) CON"*Offshore , Inc. v. Vuarnet International, B.V.*, 114F.3d 848, 850 (9th Cir. 1997). "Collateral estoppel, or issue preclusion, bars the relitigation of issues actually adjudicated in previous litigation between the same parties." *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1320, 1321 (9th Cir. 1992) To foreclose relitigation of an issue under collateral estoppel: (1) the issue at stake must be identical to the one alleged in the prior litigation; (2) the issue must have been actually litigated in the prior litigation; and (3) the determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in the earlier action.Id. at 1320. The party asserting preclusion bears the burden of showing with clarity and certainty what was determined by the prior judgment. Id. at 1321.

1) *Colon v Coughlin* 58 F.3d 865, 869 (2nd Circuit 1995) "...[T] he doctrine of issue preclusion only applies if (1) the issue in question was actually and necessarily decided in a prior proceeding, and (2) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the first proceeding. See *Hill v. Coca-Cola Bottling Co* ., 786 F.2d 550, 552-53 (2d Cir. 1986); *Kaufman v. Eli Lilly & Co* ., 65 N.Y.2d 449, 455, 492 N.Y.S.2d 584, 588, 482 N.E.2d 63 (1985).Issue preclusion

Filed In United States Court Of Appeals For 9th Circuit
26th July 2001-Dated 23rd July 2001

EXCERPT FROM APPELLANT ANGELA BERNHARDT'S CITATIONS OF SUPPLEMENTAL AUTHORITIES ON BRIEFS -FRAP 28 (j) TO THE PANELAND EN BANC COURT OF THE UNITED STATES COURT OF APPEALS FOR NINTH CIRCUIT

USCA 9th - CASE No 00-55596 & 00-55530 - Bernhardt v Santa Monica College et al, & County Of Los Angeles et al.

1. *Colon v Coughlin 58 F.3d 865, 869 (2nd Circuit 1995)* Continued - will apply only if it is quite clear that these requirements have been satisfied, lest a party be "precluded from obtaining at least one full hearing on his or her claim." *Gramatan Home Investors Corp. v. Lopez,* 46 N.Y.2d 481, 485, 414 N.Y.S.2d 308, 311, 386 N.E.2d 1328 (1979). The party asserting issue preclusion bears the burden of showing that the identical issue was previously decided, while the party against whom the doctrine is asserted bears the burden of showing the absence of a full and fair opportunity to litigate in the prior proceeding. *Kaufman* , 65 N.Y.2d at 456, 492 N.Y.S.2d at 588

NOTES FOR ISSUE 1

[1] Santa Monica College, Santa Monica Community College District and Ron Marable were the only appellees who were defendants in the Small Claim. Please take Judicial Notice Of the Small Claim filed Sept 2nd 1998 [ER –V1-61 & 62] which small claim is in the record but not attached to the First Amended Complaint.

[2] Small Claim 98A01437 filed 2 nd Sept 1998 did not include a cause of action against Santa Monica College teacher Larry Jones for sexual assault or continuing discrimination etc.Please take Judicial Notice of the Small Claim at[ER V1 – 61 & 62] **[NOTE SMALL CLAIM IS AT-PETITION FOR WRIT OF CERTIORARI APPENDIX C APP 40-45]**

FILED 26th July 2001 In United States Court Of Appeals For 9th Circuit

EXCERPT FROM APPELLANT ANGELA BERNHARDT'S CITATIONS OF SUPPLEMENTAL AUTHORITIES ON BRIEFS -FRAP 28 (j) TO THE PANELAND EN BANC COURT OF THE UNITED STATES COURT OF APPEALS FOR NINTH CIRCUIT

USCA 9th - CASE No 00-55596 & 00-55530 - Bernhardt v Santa Monica College et al, & County Of Los Angeles et al.
NOTES FOR ISSUE 1- The district court has not made a ruling regarding Res Judicata or Collateral Estoppel with respect to any cause of action.or any issue in this case.

*Note: **All County Of Los Angeles appellees to include the County Of Los Angeles Caucasian Sheriff Does Of Judge Laurence D Rubin's courtroom R** all of whom were not a party and who could not have been a party to the Small Claims action because appellant's claims against them occurred & accrued after the Small Claim was filed on Sept 2nd 1998 **have not raised res judicata (or collateral estoppel) as a defense.*** Please take Judicial Notice of the Small Claim at[ER V1 – 61 & 62] ***Note: Santa Monica College appellees attorneys purposely confused res judicata in their answer brief on page 29** where they stated "Appellant's tort claims (battery, intentional infliction of emotional distress negligence, false arrest unlawful detainment unlawful search assault and battery were all barred by her failure to present timely claims to the Defendant Santa Monica Community College District. This fact was recognized by the Municipal court which heard Appellant's first lawsuit, resulting in the dismissal of her claims in Small Claims court. ... she cannot allege timely compliance with the law." **There has been an intentional muddling and appellant did try to warn the Court of Appeals in Appellant's Reply Brief Page 23 F.***

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2) That Federal courts must give the same preclusive effect to a (Small Claims) State Court judgment that those judgments would be given in the courts of the State from which the judgment emerged.[3]

One of the reasons Res judicata is not applicable in this case is because the California Government Claim requirement had not been fulfilled in the small Claims proceeding, because appellant in pro per did not know one was necessary, and as the California Government claim requirement is inoperative to bar an action[4] brought under 42 USC 1983 under California Law[5] it must be also inoperative under Federal Law[6].The ramifications of the command in California Supreme Court case ***Williams v. Horvath*** 16 Cal.3d 834, 842 [129 Cal.Rptr. 453, 548 P.2d 1125], (1976), that **the CaliforniaGovernment claim requirement under 910 et seq is inoperative to bar an action under 42 USC 1983**[7] and so when the California Government Claim is not filed in a Small Claims proceeding –that should not instantly make a metamorphosis into Res Judicata, during a Small Claims court "proceeding" – when Santa Monica College Police Officer Ron Marable, the only Santa Monica College defendant that appeared[9] raised the GovernmentClaims

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2) That Federal courts must give the same preclusive effect to a (Small Claims) State Court judgment that those judgments would be given in the courts of the State from which the judgment emerged - **Notes For Issue 2 continued** - requirement as a defense. and through a "judgment" which did not give clear findings, was not with prejudice and was not final[8] If the California Government Claim requirement is permitted to transform itself into Res Judicata during a Small Claims case when the defense was raised, and so therefore issues were not properly"heard" then this switch of the Government Claims requirement into the doctrine of res judicata would bar and avoid not only Small Claims hearings with claims requirements that could be timely fulfilled, but also any potential civil rights actions under 42 USC 1983 etc, which is what the California Supreme Court in *Williams* sought to avoid[10].
CITATIONS - ISSUE 2- *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 466 (1982) That Federal courts must give give the same preclusive effect to a (Small Claims) State Court Judgment in California that those judgments would be given in the courts of the State from which the judgment emerged, and that section 1738 does not allow federal courts to employ their own rules of res judicata.

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CITATIONS - ISSUE 2-*Williams v. Horvath* 16 Cal.3d 834, 842 [129 Cal.Rptr. 453, 548 P.2d 1125], (1976) As aptly described in *Illerbrun v. Conrad* (1963) 216 Cal.App.2d 521 , 524 [31 Cal.Rptr. 27], the filing of a claim fordamages "is more than a procedural requirement, it is a condition precedent to plaintiff's maintaining an action against defendants, in short, an integral part of plaintiff's cause of action." And while it may be constitutionally permissible for the Legislature to place this substantive impediment in the path of a state cause of action, it is clear that the supremacy clause will not permit a like abrogation of the perquisites of a federal civil rights litigant. **Accordingly, we hold that the claim provision of section 911.2 is inoperative in an action brought under section 1983. Thus the fact that plaintiffs in the case at bar did not allege compliance with this provision is irrelevant to their claim under the Civil Rights Act.**

NOTES FOR ISSUE 2 - [3] *Kremer v. Chemical Construction Corp* ., 456 U.S. 461 466 (1982

[4] The California Government claim Requirement that is inoperative to bar an action brought under 42 USC 1983 is a preclusive effect. [5] *Williams v. Horvath* 16 Cal.3d 834, 842 [129 Cal.Rptr. 453, 548 P.2d 1125], (1976) Note: *Williams v Horvath* was raised in appellant's Reply Brief

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NOTES FOR ISSUE 2cont. -

Williams v Hovarth was raised in appellant's reply brief Page 23.

[6] *Kremer v. Chemical Construction Corp*., 456 U.S. 461 466 (1982

[7] &42 USC 1985 & Title IX

[8] Judicial Notice Appellant asks the court to take judicial notice of the Small Claim [ER -V1- 61 & 62]and Small Claim judgment [ER -V1- 67 & 68] which are not attached to the First Amended complaint, but which arein the District court record docket 1, where the Small claims court states-"Plaintiff takes nothing from this claim" ***Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994).** Documents specifically referred to in a complaint, though nor physically attached to the pleading, may be considered.

[9] the other Santa Monica College public entity defendants Santa Monica College and Santa Monica Community College District did not appear for the Small Claim of Oct 6th 1998,**even though they had been served.**

[10] Note: The Small claims court never questioned or gave appellant due process of law to see if the Government Claim requirment could be fulfilled.

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3) That Res judicata does not apply because appellant's excessive force/retaliation claim, abuse of process, unlawful detainment claim could not have been advanced in the earlier Small Claims suit, & were not advanced as these claims occurred and accrued as well as appellant's Title IX continuing injury sexual assault discrimination hostile environment retaliation claim also accrued after appellant filed her Small Claims suit on Sept 2nd 1898.[11,12]

CITATIONS FOR 3

Lawlor v. National Screen Service **349 U.S. 322, 328 [99 L.Ed. 1122, 1127-1128, 75 S.Ct. 865 (1955)** A judgment "precludes recovery on claims arising prior to its entry, [but] it cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case."

3) Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75 , 77 n.1 (1984) "Claim preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit. The

APPENDIX H - APP 11

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Migra v Warren City School District Board Of Educ;, 465 U.S. 75, 77 n1, (1984) - preclusive effects of former litigation are commonly referred to as "res judicata.". Res judicata is often analyzed further to consist of two preclusion concepts: `issue preclusion' and `claim preclusion.'" Id. Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided. See Restatement (Second) of Judgments. This effect also is referred to as direct or collateral estoppel.

3) ***Rein v Providian Financial Corp*** **252 F.3d 1095; (9th Circ June 2001)**Res judicata, or claim preclusion, provides that a final judgment on the merits of an action precludes the parties from relitigating all issues connected with the action that were or could have been raised in that action. Claim preclusion is appropriate where: **(1)** the parties are identical or in privity; **(2)** the judgment in the prior action was rendered by a court of competent jurisdiction; **(3)** the prior action was concluded to a final judgment on the merits; and **(4)** the same claim or cause of action was involved in both suits. Collateral estoppel is appropriate when the following elements are met: **(1)** there was a full and fair opportunity to litigate the issue in the previous action; **(2)** the issue was actually litigated in that action; **(3)** the issue was lost as a result of a final judgment in that action; and **(4)** the person against whom collateral estoppel is asserted in the present action was a party or in privity with a party in the previous action. In re Palmer, 207 F.3d 566, 568 (9th Cir. 2000).

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(omitted)

4) California Law states that a Small Claim cannot be given collateral estoppel effect with respect to common issues arising in a subsequent proceeding on a different cause of action.

CITATIONS -4) *Sanderson v. Niemann* (1941) 17 Cal.2d 563 [110 P.2d 1025] "held that whereas a judgment of the small claims court may operate to merge with or bar a subsequent proceeding on the same cause of action, it could not be given collateral estoppel effect with respect to common issues arising in a subsequent proceeding on a different cause of action. Our conclusion on this latter point was reached in view of the characteristics of informality inherent in the small claims proceeding. "... [T]here are no attorneys, no pleadings and no legal rules of evidence; there are no juries, and no formal findings are made on the issues presented. At the hearings the presentation of evidence may be sharply curtailed, and the proceedings are often terminated in a short space of time. The awards -- although made in accordance with substantive law -- are often based on the application of common sense; and the spirit of compromise and conciliation attends the proceedings." (Id., at p. 573; see also Code Civ. Proc., § 117.) In these circumstances, we concluded, a judgment in such an action should not preclude the relitigation of issues decided therein in the

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(omitted)

Sanderson v. Niemann (1941) 17 Cal.2d 563 [110 P.2d 1025] Continued.—" in the context of a subsequent proceeding on a different cause of action. (See also Rest.2d Judgments (Tent. Draft No. 4) § 68.1, subd. (c), reporter's notes, pp. 44-45.)

****

5) Issue preclusion would not be fair or consistent with California public policy in this case because there was no consideration of the scope of the Small Claim court's jurisdiction, its procedural safeguards, and no judicial review of the Small Claims adverse rulings.

CITATIONS FOR ISSUE 5) ***Nevada v. Hall*****, 440 U.S. 410, 421-424, 59 L. Ed. 2d 416, 99 S. Ct. 1182 (1979)).** A court may be guided by the forum State's "public policy" in determining the law applicable to a controversy

5) ***Vandenberg, v The Superior Court Of Sacramento County*****, 21 Cal. 4th 815; 982 P.2d 229; Supreme Court Of California 1999 "Whether collateral estoppel is fair and consistent with public policy in a particular case depends in part upon the character of the forum that first decided the issue later sought to be foreclosed. In this regard, courts consider the judicial nature of the**

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***Vandenberg, v The Superior Court Of Sacramento County*, 21 Cal. 4th 815; 982 P.2d 229; Supreme Court Of California 1999 continued.** of forum that first decided the issue later sought to be foreclosed. In this regard, **courts consider the judicial nature of the prior forum, i.e., its legal formality, the scope of its jurisdiction, and its procedural safeguards, particularly including the opportunity for judicial review of adverse rulings.** (See, e.g., *United States v. Utah Constr. Co*. (1966) 384 U.S. 394, 421-422 [86 S. Ct. 1545, 1559-1560, 16 L. Ed. 2d 642] (Utah Constr. Co.) [findings by Board of Contract Appeals were entitled to collateral estoppel where agency acted in "judicial capacity," findings were relevant to issues presented, **parties had full and fair opportunity to litigate, and judicial review of adverse findings was available**]... ***Sanderson v. Niemann* (1941) 17 Cal. 2d 563, 573-575 [110 P.2d 1025] (Sanderson) [small claims judgments not entitled to collateral estoppel effect, given informality of proceedings, including limited right to judicial review]...Moreover, a particular danger of injustice arises when collateral estoppel is invoked by a nonparty to the prior litigation..Under these circumstances, the public policy reasons against applying the collateral estoppel doctrine** (see, e.g., *Lucido*, supra, 51 Cal. 3d 335, 343; Kelly, supra, 60 Cal. App. 3d 195, 202) well outweigh those in favor of doing

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6) The Restatement Of The Law, Second, Judgments support that the Small Claim filed Sept 2nd 1998 is not res judicata, and does not extinguish remedies against appellees with respect to a series of connected transactions out of which the Federal action arose, because Title IX continuing violation theory sexual assault discrimination hostile environment & retaliation claim & appellants claims of excessive force, and manufacturing false evidence and unlawful detainment and obstruction of justice & conspiracy claims under 42 USC Section 1983 and 1985, accrued in the Small Claims proceeding on Oct 6th 1998.

CITATIONS FOR 6 ***Restatement Of The Law, Second, Judgments*** § 24 Dimensions of "Claim" for Purposes of Merger or Bar -- General Rule Concerning "Splitting" 1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar (see §§ 18, 19), the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. (2) What factual grouping constitutes a

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CITATIONS FOR 6 ***Restatement Of The Law, Second, Judgments*** § 24 Dimensions of "Claim" for Purposes of Merger or Bar -- General Rule Concerning "Splitting" (2) What factual grouping constitutes a **"series"** , are to be determined **pragmatically** , giving weight to such considerations as whether the facts are related in time, space, **origin, or motivation,** whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage. § 26 Exceptions to the General Rule Concerning Splitting (1) When any of the following circumstances exists, the general rule of § 24 does not apply to extinguish the claim, and part or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendant:

(b) **The court in the first action has expressly reserved the plaintiff's right to maintain the second action; or**

(d) The judgment in the first action was plainly inconsistent with the fair and equitable implementation of a statutory or constitutional scheme, or it is the sense of the scheme that the plaintiff should be permitted to split his claim; or (e) For reasons of substantive policy in a case involving a continuing or recurrent wrong, the plaintiff is given an option to sue once for the total harm, both past and prospective, or to sue from time to time for the damages incurred to the date of suit, and chooses the latter course; or (f) It is clearly and convincingly shown that the

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Restatement Of the Law Second, Judgments 24, Dimensions Of "Claim" For Purposes Of Merger Or Bar.
policies favoring preclusion of a second action are overcome for an extraordinary reason, such as the apparent invalidity of a continuing restraint or condition having a vital relation to personal liberty or the failure of the prior litigation to yield a coherent disposition of the controversy.
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8) As there are material questions of fact in dispute which are not res judicata regarding whether appellant in pro per received a full and fair opportunity to litigate her small claim 98A01437 - appellant would like a jury to decide this which she requested in her First Amended Complaint. [ER -V2 -PAGE 1]

CITATIONS FOR ISSUE 8
8) LaLonde v County Of Riverside **204 F.3d 947; (9th Circuit 25th Feb 2000)** "the facts are disputed, and the disputed facts here should have been submitted to the jury, even when qualified immunity from suit was an issue. Issues of credibility belong to the trier of fact. The Seventh Amendment to the Constitution so requires. *Thompson v. Mahre,* 110 F.3d 716, 719 (9th Cir. 1997) makes this as clear as the proverbial bell."

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2. That Appellant's Constitutional Claims or State Tort Claims are not res judicata or collateral estoppel, and that the Small Claims Default Judgment of Oct 6th 1998, has no res judicata effect because California follows the "primary rights" theory, under which the right sought to be enforced determines the cause of action.[1] The invasion of more than one primary right gives rise to as many causes of action as rights violated, even though all may arise from a single set of facts, or may arise from more than a single set of facts.[2, 3]

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[1] ***See 3 Witkin, California Procedure, Pleadings @ 22 (1971)***

[2] Note: **In the Small claim filed 2nd Sept 1998 [ER -V1-61 & 62], the primary right violated was "the right to be able to report a sexual assault complaint to a police officer in Nov 1996 at Santa Monica College and have that complaint taken down in writing and for that complaint to not be covered up and Santa Monica College Police Officer Ron Marable's defamation, and the College's negligence in that matter." Note: The discovery of the police cover up was March 17th 1998.** These were the only primary rights at issue in the Small Claim "proceeding" on Oct 6th 1998 with respect to Ron Marable, and Santa Monica College and Santa Monica

FILED 20TH AUG 2002 -DATED 17TH AUG 2001 **PRIMARY RIGHTS THAT HAVE BEEN VIOLATED -EXCERPT FROM APPELLANT'S CITATIONS OF SUPPLEMENTAL AUTHORITIES ON BRIEFS-FRAP 28 (j) TO THE PANEL AND EN BANC COURT OF THE UNITED STATES COURT OF APPEALS FOR 9TH CIRCUIT.**-USCA 9th - CASE No 00-55596 & 00-55530Bernhardt v Santa Monica College & County Of Los Angeles et al.

[2] Note: Continued. and Santa Monica College and Santa Monica Community College District did not appear, and the issues were not litigated fully or fairly because a precondition to suit was not met.

[3] **Note: <u>Here is a list of all the primary rights that have been violated in this Federal Civil Rights Claim</u>.**

1. The right to be free from Offensive Bodily Contact in a College class by appellee Larry Jones - July 1994.
2. The right to be free from harmful bodily contact and excessive force by appellees County Of Los Angeles Caucasian Sheriffs Does and appellee Santa Monica College Police Officer Ron Marable in appelleee Judge Laurence D Rubin's County Of Los Angeles Courtroom R on Oct 6th 1998.
3. The right to be free from apprehension of a harmful bodily contact by the first County Of Of Los Angeles Caucasian Sheriff Deputy Doe who approached appellant on Oct 6th 1998 in County Of Los Angeles Courtroom R, on the side of the long wide table near the public exit which table blocked litigants from the Judge's pedestal area.
4. The right to be free from false arrest, unlawful search, and unlawful detainment.
5. The right to be free from continuing discrimination by Instructor Larry Jones who had previously sexually assaulted appellant in his class, which discrimination forced her to leave the photography department.

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[3] **Note: Continued - <u>list of all the primary rights that have been violated in this Federal Civil Rights Claim</u>.**

6. The right to be free from intentional infliction of emotional distress and defamation of character caused by Larry Jones's defamation of appellant's character.
7. The right to education at Santa Monica College without having to endure a continuing hostile environment caused by the Instructor Larry Jones's initial sexual assault violation, his continuing discrimination, his intentional infliction of emotional distress, and his defamation of my character to police officer Marable.
8. The right to education at Santa Monica College without having to endure a continuing hostile environment caused by **Santa Monica College police refusing to take down my sexual assault complaint in writing because Ron Marable said my complaint was to old to report, and then later covering up my sexual assault complaint against Santa Monica College Instructor Larry Jones. Note. No 8 & 9, & 10 does encompass the issue "emotional injury due to police cover up" which was a cause of action in the Small Claim but the issue was not actually litigated to conclusion as a precondion to suit was not met, and a default judgment was entered.**
9. The right to not be defamed by Santa Monica College Police Officer Ron Marable.

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10. The right to be able to report a sexual assault complaint to Santa Monica College and their police department without them covering it up, thus denying appellant equal protection of the laws.

11. The right to education at Santa Monica College without having to endure a continuing hostile environment through the College's framing appellant through the sexual assault investigation -which distorted facts and made use of the police cover up of appellants sexual assault complaint, and the college's pretext to ban appellant from the college without due process of law for no good reason - to discredit appellant in order to cover up the Instructors's sexual assault of appellant.

12. The right to not be framed and defamed by Santa Monica College, Santa Monica Community College District, Santa Monica College Police Department and their employees.

13. The right not to be framed by the college instructor who sexually assaulted me in his class in 1994, in order to conceal he committed an offensive battery, or to retaliate because appellant did not respond to his offensive battery.

14. The right to not have to endure a hostile environment through the college's refusal to investigate the police officer for police cover up of a sexual assault complaint.

15. The right to make a report against a student for harassment without being banned on a pretext 5 months later..

16. The right to not be retaliated against by Santa Monica College et al for reporting the Instructor's sexual assault complaint in Nov 1996.

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PRIMARY RIGHTS VIOLATED CONTINUED -
17. The right to make a complaint about a police officer at a California Community College and have their superiors conduct a proper and formal investigation.
18 The right to be free from intentional inflication of emotional distress caused by Robert Sammis threatening me with the Santa Monica college Police On Aug 27th 1998 in my meeting with Piedad Robertson.
19. The right to be free from being set up and framed by Santa Monica College et al.
20. The right to a full fair & safe hearing with due process of law on Oct 6th 1998.
21. The right of free access to the courts for violation of civil rights without obstructions.
22. The right to to be informed at the beginning of the Small claims hearing that the California government claim precondition to the lawsuit was not met - which would have prevented the abuse of process/excessive force.
23. The right to not be retaliated against through excessive force by County Of Los Angeles et al, and Santa Monica College and Ron Marable for exposing Marable's police cover up of a sexual assault complaint on Oct 6th 1998.
24. The right to be free of excessive force in a County Of Los Angeles Courtroom on October 6th 1998.
25. The right to not be subjected to an abuse of process in Los Angeles Municipal Court - Santa Monica courtroom
26.. The right to be free from defamation by Judge Laurence D Rubin and County Of Los Angeles et al which defamation regarding that appellant lunged at him - was first raised on appeal but not in district court.
25. The right to have a serious investigation by County Of Los Angeles Sheriff's department into Sheriffs who caused assault and battery/excessive force for no good reason.

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PRIMARY RIGHTS VIOLATED CONTINUED -
27. The right to not be harassed by Santa Monica College Police Officer Ron Marable.
28. The right to be free from defamation of character by County Of Los Angeles Sheriff Deputy Bailiff Terry January and County Of Los Angeles et al.
29. The right to be free from defamation of character by County Of Los Angeles et al and Ron Marable's denial that the Caucasian Sheriffs Deputy Does caused excessive force to appellant.
30. The right to be free from a conspiracy by the government entities.
31. The right to be free from intimidation , extortion and kidnap.

CITATIONS FOR 2

2. Los Angeles Branch NAACP v. Los Angeles Unified School District et al., 750 F.2d 731; (9th Circuit 1984)"
California follows the "primary rights" theory, under which the right sought to be enforced determines the cause of action. See 3 Witkin, California Procedure, Pleadings @ 22 (1971). The invasion of more than one primary right gives rise to as many causes of action as rights violated, even though all may arise from a single set of facts. See, e.g., *Sawyer v. First City Financial Corp.*, 124 Cal. App. 3d 390, 399, 177 Cal. Rptr. 398, 403 (1981)...***Agarwal v. Johnson,*** 25 Cal. 3d 932, 954, 160 Cal. Rptr. 141, 155, 603 P.2d 58, 72 (1979). **There plaintiff first brought suit in federal court for employment discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. @ 2000e. He subsequently was permitted to sue his employer in state court for the common law torts of defamation and intentional infliction of emotional distress arising out of the same discriminatory employment practice. The California Supreme Court held that the federal action**

FILED 20TH AUG 2002 -DATED 17TH AUG 2001 **PRIMARY RIGHTS VIOLATED CONTINUED** - was brought to remedy the economic loss in wages, while the state action was brought to redress injuries to the different interests in reputation and peace of mind.**As ..Agarwal indicate[s], the single most important factor in determining whether a single course of conduct has violated more than one primary right is whether plaintiff suffered injury to more than one interest.** See also ***Ford Motor Co. v. Superior Court,*** 35 Cal. App. 3d 676, 679, 110 Cal. Rptr. 59, 61 (1973).***3.***
****

3. Santa Monica College appellees have not met the requisite identity of causes of action in the Small claim and in the Federal Claim to be able to raise res judicata as a defense [AND SMALL CLAIMS IN CALIFORNI A ARE NOT BARRED BY COLLATERAL ESTOPPEL ON A SUBSEQUENTDIFFERENT CAUSE OF ACTION]

3. Agarwal v Johnson Supreme Court Of California, 25 Cal. 3d 932; 603 P.2d 58; 1979 Cal. Rptr."Under one aspect of the doctrine of res judicata, "A valid final judgment on the merits in favor of a defendant serves as a complete bar to further litigation on the same cause of action." (*Slater v. Blackwood* (1975) [***39] 15 Cal.3d 791, 795 [126 Cal.Rptr. 225, 543 P.2d 593].) **Unless the <u>requisite identity of causes of action</u> is established, however, the first judgment will not operate as a bar.** ***Johnson, French, and McKee contend Agarwal's state and federal claims comprise but one cause of action because they arise from the same set of operative facts. We do not agree.*** **Under the "primary rights" theory adhered to in California it is true there**

APPENDIX H - APP 25

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EXCERPT FROM APPELLANT'S CITATIONS OF SUPPLEMENTAL AUTHORITIES ON BRIEFS-FRAP 28 (j)
Agarwal v Johnson Supreme Court Of California, 25 Cal. 3d 932; 603 P.2d 58; 1979 Cal. Rptr.
"We do not agree. **Under the "primary rights" theory adhered to in California it is true thereis only a single cause of action for the invasion of one primary right.** (Ibid.) **But the significant factor is the harm suffered;** that the same facts are involved in both suits is not conclusive. *Langley v. Schumacker* (1956) 46 Cal.2d 601, 602-603 [297 P.2d 977].) **Title VII vests employees with independent federal statutory rights against discriminatory employment practices. It does not supplant state remedies."**
Restatements Judgments Second # 20 Judgment for Defendant - Exceptions to General Rule Of Bar
(2) A valid and final judgment for the defendant which rests...on the plaintiff's failure to satisfy a precondition to suit, does not bar another action by the plaintiff instituted after...the precondition has been satisfied, unless a second action is precluded by operation of the substantive law. -Comment K Rational For Subsection (2) A determination by the court that the plaintiff has no enforceable claim because ...she has failed to satisfy a precondition to suit, is not a determination that she may not have an enforceable claim therafter, and does not normally preclude her from maintaining an action when the claim has become enforceable. The rule stated in this subsection is applicable whether the fact ...that a precondition has not been satisfied appears on the face of the pleadings.
Definintion Of A Default Judgment - A judgment entered by a court after an entry of default against a party for failure to appear, to file a pleading, or **to take other required procedural steps (called also judgment by default)**

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United States Court Of Appeals 9th Circuit.

[6] Note: In Restatement Of Judgments 2nd # 27 comment e) **Issues Not Actually Litigated If preclusive effect were given to issues not litigated, the result might serve to discourage compromise, ... and ... intensify litigation. In the case of a judgment entered by** confession, consent or **default, none of the issues are actually litigated. Therefore the rule of this Section # 27 does not apply with respect to any issue in a subsequent action.**

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6. That res judicata does not apply if new conduct that included new parties caused new injuries after the first action was filed 2nd Sept 1998 which could not have been part of the first action as these new injuries did not exist and accrue until Oct 6th 1998.[7]

6. Eichman v Fotomat Corp 759 F.2d 1434; 1438(9th Circ 1985) "California courts follow the approach taken by the Supreme Court in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, at 328, 99 L. Ed. 1122, 75 S. Ct. 865 (1955), that a prior judgment "cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case."

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7. Supports that appellant's claims against Santa Monica College et al are not res judicata, as appellant did not know that Santa Monica College Officials fabricated probable cause to arrest prior to Oct 6th 1998, as the perjury and arrest did not occur until Oct 6th 1998.

7. Spurlock v Satterfield, 167 F.3d 995; 1004 (6th Circuit 1999) "...What plaintiffs, in essence, allege here is the fabrication of probable cause, and contrary to Satterfield's argument, the fabrication of probable cause cannot be

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7. Spurlock v Satterfield, 167 F.3d 995; 1004 (6th Circuit 1999) **continued.** " immunized by later providing false testimony. **Obviously, the two alleged acts,manufacturing false evidence and later presenting that false evidence in the form of testimony, are inextricably linked.** Nonetheless, we find that adopting Satterfield's reasoning would lead to the **untenable result that officials who fabricate evidence or manufacture probable cause could later shield themselves from liability simply by presenting false testimony regarding that evidence. Plaintiffs do not allege that Satterfield and others merely presented false testimony. Indeed, they allege that something much more egregious was at work here. Specifically, that not only did Satterfield and other defendants know that Apple's testimony was false, but that they provided Apple with information regarding the Malone murder, and fabricated probable cause."**

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8. That res judicata does not apply to the continuing violation theory sexual assault discrimination hostile environment and retaliation claim under Title IX. Under the continuing violation theory - a systemic and/or serial violation has its roots in discriminatory policy or practice, and as long as the discriminatory policy or practice itself, continues into the limitation period and is related to the prior discrimination, the challenger may be deemed to have filed a timely complaint which is also not res judicata when the new discriminatory acts could not possibly have been sued upon in the previous Small Claims action filed 2nd Sept 1998, as these new injuries did not exist until Oct 6th 1998 during the Small Claims

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8 Continued. proceeding and after.[8] Also the issues in the California Small Claim proceeding were never fully or fairly litigated in a safe environment with due process of law, and a default judgment was entered so res judicata and collateral estoppel actually don't apply .

***8. Morgan v. Amtrak*, 232 F.3d 1008; 1016,(9th Circuit 2000) Continuing Violation Theory- The continuing violations doctrine, however, allows courts to consider conduct that would ordinarily be time barred "as long as the untimely incidents represent an ongoing unlawful employment practice." Anderson v. Reno, 190 F.3d 930, 936 (9th Cir. 1999); see e.g., *Draper v. Coeur Rochester, Inc.*, 147 F.3d 1104, 1107 (9th Cir. 1998)....Fielder v. UAL Corp., 218 F.3d 973 (9th Cir. 2000),.**

***8. Fielder v UAL (9th Circuit 2000) 218 F.3d 973; 2000 U.S.*"A hostile work environment exists when a plaintiff shows; "(1) that he or she was subjected to sexual advances, requests for sexual favors, or [**26] other verbal or physical conduct of a sexual nature; (2) that this conduct was unwelcome; and (3) that the conduct was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Ellison v. Brady*, 924 F.2d 872, 875-876 (9th Cir. 1991). We examine elements of these claims from the perspective of a reasonable person of the victim's gender - here, from the perspective of the "reasonable woman." Id. at 883..."A 'hostile work environment' occurs when there is a pattern of ongoing and persistent harassment severe**

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8. Fielder v UAL 218 F.3d 973; (9th Circuit 2000)
continued. enough to alter the conditions of employment." Draper, 147 F.3d at 1108. Most instances of hostile environments are not capable of facile identification. "Instead, the day-to-day harassment [is] particularly significant, both as a legal and a practical matter, in its cumulative effect." Id. To satisfy the continuing violation theory, the plaintiff must show that a hostile environment exists and it continued into the period of limitations.
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9. The Court had no jurisdiction to hear appellant's continuing violation claims under Title IX or Claims against the County Of Los Angeles appellees on Oct 6th 1998.

9. Eichman v Fotomat Corp 759 F.2d 1434; 1438(9th Circ 1985)"**Under California preclusion law, in order for res judicata to apply to claims not raised in previous proceedings, the court rendering the prior judgment must have had jurisdiction to hear such claims.** See *Teitelbaum Furs, Inc. v. Dominion Ins. Co.*, 58 Cal. 2d 601, 604, 375 P.2d 439, 440, 25 Cal. Rptr. 559, 560 (1962), cert. denied, 372 U.S. 966, 10 L. Ed. 2d 130, 83 S. Ct. 1091 (1963); ..".**We are remitted to the more general principle that prior jurisdictional competency is a requirement for the application of res judicata. This is a rule of near universal application. See Restatement (Second) of Judgments @ 26(1)(c).**
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10 - The question of fact - whether a hostile educational environment exists - is determined with reference to the totality of the circumstances, and whether institution had actual knowledge of the harassment and contributed further to it. Monteiro v The Temple Union High School District 158 F.3d 1022; (9th Circ 1998) **1. Hostile Environment - The Department of Education defines a "...hostile environment" as one in which ... harassment is "severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by the recipient." Id. at 11449. Whether a hostile educational environment exists is a question of fact, determined with reference to the totality of the circumstances, including the victim's [sex] race and age.Racial harassment creates a hostile environment if it is sufficiently severe that it would interfere with the educational program of a reasonable person of the same [sex] age and race as the victim. 59 Fed. Reg. 11449; see *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991) (holding that "reasonable person" in sexual harassment case brought by female plaintiff is a reasonable woman). A hostile environment claim requires the victim to have been subjected to harassment severe enough to compromise the victims educational opportunities, and in the Case of a Title IX claim the institution must have had actual knowledge of the harassment and have exhibited deliberate indifference to it. Gebser, 118 S. Ct. at 1997-99.**

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Angela Bernhardt In Pro –Per
17th August 2001

FILED 15TH DEC 1999 - UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Verified Second Amended complaint For Violation Of Civil Rights (42 USC Section 1983) (DEMAND FOR JURY TRIAL)

Angela Bernhardt Plaintiff v County Of Los Angeles and Lloyd Pellman individually and in his official capacity.

USDCCDC - (CV-99-10121-(JSL) (Mc) [Note CV-99-10121-(JSL) (Mc) became 9th Circuit Appeal No. 00-55524 and was reversed and remanded in *Bernhardt v County Of Los Angeles et al* 279 F.3d 862 (9th Circuit published opinion 4th Feb 2002)]

Plaintiff alleges the following upon information and belief, excepting paragraph 5A ...which are alleged upon personal knowledge...PREAMBLE...

5A On Oct 6th 1998, a County Of Los Angeles Sheriff Deputy, aprox 35 years old, and approx 5ft 9in, with ash blond straight hair, fairly narrow eyes, a square jaw, and a highly distinctive and recognizable face, acting in uniform and on-duty, in Judge Laurence D Rubin's Santa Monica Courtroom R, took an attack posture in face and body, several feet away from Plaintiff before he kicked plaintiff tothe ground, and then after securing her hands- punched her with his fists for about two minutes around her ribcage. Seconds after Plaintiff had been kicked to the ground by this first County Of Los Angeles Sheriff, other Sheriff deputies joined him, and punched Plaintiff with their fists, dug their fingernails into Plaintiff's left hand, and wrenched her glasses off her face.

APPENDIX I- APP 32

FILED 15TH DEC 1999 - UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Verified Second Amended complaint For Violation Of Civil Rights (42 USC Section 1983) (DEMAND FOR JURY TRIAL) Angela Bernhardt Plaintiff v County Of Los Angeles et al,. CV-99-10121-JSL -(Mc)

5ACONTINUED - Seconds after Plaintiff had been kicked to the ground by this first County Of Los Angeles Sheriff, other Sheriff deputies joined him, and punched Plaintiff with their fists, dug their fingernails into Plaintiff's left hand, and wrenched her glasses off her face. One of the defendants for this County Of Los Angeles Court hearing, Santa Monica College Police Officer Ron Marable, who was the only defendant to appear at this hearing, who was in uniform and on duty, towards the end of the beating Plaintiff took, while she was restrained on the ground by the other County Of Los Angeles Sheriff's deputies, put his hand on plaintiff's back as she lay there, and remained in this pose for approximately thirty seconds, while the other County Of Los Angeles Sheriffs looked on. Each of the deputies and Ron Marable, although they had notice and present ability to do so, also failed to protect Plaintiff from use of excessive force by the others. The County Of Los Angeles Sheriff's deputies then unlawfully detained, arrested and imprisoned Plaintiff in Judge Laurence D Rubin's Courtroom's holding cell, and they further terrorized Plaintiff by informing her that they were about to take her downtown to County Of Los Angeles Jail.

APPENDIX I- APP 33

FILED 15TH DEC 1999 - UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Verified Second Amended complaint For Violation Of Civil Rights (42 USC Section 1983) (DEMAND FOR JURY TRIAL) Angela Bernhardt Plaintiff v County Of Los Angeles et al,. CV-99-10121-JSL -(Mc)

5B The foregoing use of force and failure to protect constitutes excessive force, under color of law, on Plaintiff without legal justification or excuse, all in violation of Plaintiff's federal constitutional right under the Fourth Amendment to be free from use of excessive force. The Foregoing detention, arrest and imprisonment of Plaintiff was under color of law and was in violation of Plaintiff's Federal Coñstitutional Right to be free from unreasonable seizure and arrest without a warrant or probable cause. All of the foregoing gave plaintiff causes of action against the County Of Los Angeles Sheriff's deputies and Santa Monica College Police Officer Ron Marable under 42 USC 1983 and 42 USC 1985 as well as County Of Los Angeles et al, and Santa Monica College et al.

Angela Bernhardt Plaintiff In Pro-Per - 13th Dec 1999